

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

EUGENE PRICE,

Petitioner,

v.

THE PEOPLE,

Respondent.

No. 2:24-cv-03418 CKD P

ORDER AND

FINDINGS AND RECOMMENDATIONS

Petitioner, a state prisoner proceeding pro se, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, together with an application to proceed in forma pauperis. Examination of the in forma pauperis application reveals that petitioner is unable to afford the costs of suit. Accordingly, the application to proceed in forma pauperis will be granted. See 28 U.S.C. § 1915(a).

Under Rule 4 of the Rules Governing Section 2254 Cases, the court must review all petitions for writ of habeas corpus and summarily dismiss any petition if it is plain that the petitioner is not entitled to relief. The court has conducted that review.

A writ of habeas corpus can be granted to a state prisoner if they are in custody in violation of federal law. 28 U.S.C. 2254(a). Here, petitioner complains about the representation currently being provided by his counsel on direct appeal. Petitioner asks that counsel be removed and that petitioner be permitted to represent himself. These are not grounds upon which the court

1 can grant habeas relief. Petitioner should instead present his requests to the California Court of
2 Appeal. For these reasons, the court will recommend that petitioner's petition for writ of habeas
3 corpus be summarily dismissed.


4 Accordingly, IT IS HERBY ORDERED that:

- 5 1. Petitioner's request for leave to proceed in forma pauperis (ECF No. 7) is GRANTED.
- 6 2. The Clerk of the Court assign a district court judge to this case.

7 IT IS HEREBY RECOMMENDED that petitioner's petition for a writ of habeas corpus
8 be summarily dismissed.

9 These findings and recommendations are submitted to the United States District Judge
10 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
11 after being served with these findings and recommendations petitioner may file written objections
12 with the court. Such a document should be captioned "Objections to Magistrate Judge's Findings
13 and Recommendations." In his objections petitioner may address whether a certificate of
14 appealability should issue in the event he files an appeal of the judgment in this case. See Rule
15 11, Federal Rules Governing Section 2254 Cases (the district court must issue or deny a
16 certificate of appealability when it enters a final order adverse to the applicant). Where, as here, a
17 habeas petition is dismissed on procedural grounds, a certificate of appealability "should issue if
18 the prisoner can show: (1) 'that jurists of reason would find it debatable whether the district court
19 was correct in its procedural ruling;' and (2) 'that jurists of reason would find it debatable
20 whether the petition states a valid claim of the denial of a constitutional right.'" Morris v.
21 Woodford, 229 F.3d 775, 780 (9th Cir. 2000) (quoting Slack v. McDaniel, 529 U.S. 473, 484
22 (2000)). Petitioner is advised that failure to file objections within the specified time may waive
23 the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

24 Dated: February 3, 2025

25 
26 CAROLYN K. DELANEY
27 UNITED STATES MAGISTRATE JUDGE
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